

said valve body is in said closed position and disengaged with said aperture when said valve body is in said open position.

A marked-up version of these rewritten claims is provided herewith on one or more pages separate from this amendment, pursuant to 37 C.F.R. 1.121(c)(1)(ii).

### **REMARKS**

The present amendment is in response to the Decision on Appeal dated October 21, 2002 in the above-referenced patent application. In that appeal, claims 1-5, 7, 9, 33 and 34 were on appeal from the Examiner's final rejection. Claim 35 had previously been allowed by the Examiner and claims 6, 8, and 10-32 had been cancelled.

As a result of the decision, the rejection of claims 2, 4 and 5 under 35 U.S.C. § 112, second paragraph, was affirmed. The rejection of claim 34 under 35 U.S.C. § 112, second paragraph, was reversed. The rejection of claims 1-5, 7, 9 and 33 was affirmed, but under new grounds. Accordingly, the applicant was given two months to respond by either submitting an amendment or requesting a rehearing. That two month response period ended on December 21, 2002, a Saturday, making the response due December 23, 2002. Applicant has elected to submit an amendment under 37 C.F.R. § 196(b)(1).

Currently, applicant believes that claims 34 and 35 stand as allowed or allowable. By this amendment, applicant amends claim 1 to include language believed to place it in condition for allowance in view of the Board's comments. Claims 2-4 and 33 have been cancelled. Claim 5 has been amended with the intent of removing the affirmed rejection under 35 U.S.C. §

112, second paragraph. Therefore, it is submitted that this application is in full condition for allowance.

Specifically, the Board affirmed the rejection of claim 1 primarily over U.S. Patent No. 5,145,094 to Perlmutter. The Board first noted that U.S. Patent No. 3,201,013 to Porter et al lacked both the cap member with a longitudinal slot along the guide member and the valve body with an ear projecting radially outwardly that is received in the slot. *Decision, at page 14.* The Board noted, however, that Perlmutter appeared to have the limitations of claim 1 as to the removability of the flanges 41 out of the slots defined by arms 19 of the cap member because "it is our determination that the space circumscribed by skirt 14 of the cap member as shown in Figure 1 would inherently permit a user to insert a tool to press flanges 41 of the closure member together permitting the user to grab the end wall 29 of the closure member and remove the closure member 26 from the cap member 10." *Decision, at page 15 (emphasis added).*

Therefore, claim 1 has been amended: (1) to include recitation that the valve body is constructed of a stiff yet resiliently bendable material; and (2) to recite that the ear both defines a stop member and is configured to cause deformation of the valve body upon rotation of the valve body to permit disengagement from the sleeve in the cap member. This allows a user to separate the cap member and the valve body of the present invention without the need to use any tool. Moreover, in order to separate the closure member and the cap member of Perlmutter with a tool, it would be necessary for the user to remove the dispensing closure from any container to access the region described by the Board. The recitations added to claim 1 have the

advantage of allowing a user to separate the pieces while the dispensing closure remains on the container.

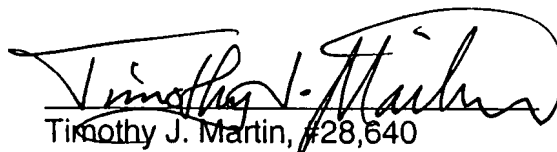
Indeed, the added recitations in claim 1 place it more in alignment with the structure deemed allowable with respect to previously allowed claim 35. In this regard, though, it must be appreciated that the recitations of claim 1 are still broader than the more detailed structure of claim 35.

Due to the amendment to claim 1, claims 2-4 and 33 have been cancelled. This resolves the rejections of these claims under 35 U.S.C. § 112, second paragraph. Claim 5 has been amended to depend from claim 1 and to comport with the recitations of claim 1 but here in respect to the pair of ears recited. Claim 5 is also amended to correct any issues under 35 U.S.C. § 112, second paragraph. Claim 7 has been amended to correct its dependency resulting from the cancellation of its earlier parent claim.

Based on this amendment, applicant suggests that this application is in full condition for allowance. If any issues remain to be resolved, it is specifically requested that the Examiner contact the attorney for the applicant at the telephone number listed below for a telephonic interview.

Respectfully submitted,

***TIMOTHY J. MARTIN, P.C.***

A handwritten signature in black ink, appearing to read "Timothy J. Martin", with a large, stylized flourish at the end.

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**CERTIFICATE OF MAILING UNDER 37 C.F.R. 1.8**

I hereby certify that the foregoing **AMENDMENT (6 pages) AND VERSION WITH MARKINGS SHOWING CHANGES (3 pages)** is being deposited with the United States Postal Service as first-class mail in an envelope addressed to Assistant Commissioner for Patents, Washington, D.C. 20231, on this 23<sup>rd</sup> day of December, 2002.

Marcie F. Lutterschmidt  
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**VERSION WITH MARKINGS TO SHOW CHANGES MADE**

1. (Twice Amended) A closure for a container that is adapted to hold a product for dispensing, comprising:

(a) a cap member mountable to a container, said cap member having a product outlet passage and a sleeve defining said outlet passage that includes a guide member and a longitudinal slot along said guide member; and

(b) a valve body disposed for longitudinal movement within said sleeve between an open position to permit flow of product through said passage from said container and a closed position to prevent flow of product through said passage, said valve body constructed of a stiff yet resiliently bendable material and having an ear projecting radially outwardly and, ~~said ear received in said slot during use to define a stop member for limiting movement of said valve body within said sleeve between the open and closed positions, said valve body rotatable within said sleeve with said ear configured such that, upon rotation, said ear will act against said guide member to deform said valve body and become disengaged from the slot thereby and removable out of said slot to allow removal of said valve body from said sleeve upon longitudinal movement of said valve body relative to said sleeve.~~

~~2. The closure of claim 1, wherein said valve body includes at least one stop member for limiting movement of said valve body within said product outlet passage between said open and closed positions.~~

~~3. The closure of claim 1, wherein said valve body is radially deformable for selective removability from said passage.~~

~~4. The closure of claim 3, wherein said ear defines a stop member for limiting the longitudinal movement of said valve body within said sleeve between said open and closed positions and wherein limit ear and said slot both the longitudinal movement and restrict rotational movement of said valve body within said sleeve.~~

5. (Twice Amended) The closure of claim 14, wherein said valve body includes a pair of ~~said stop members in the form of ears~~ disposed on opposite sides of said valve body, and wherein said sleeve includes a pair of guide members defining a pair of oppositely disposed slots each sized to respectively engage one of said ears to define and limit the longitudinal movement of said valve body between said open and closed positions, each of said ears configured to act against a respective said guide member upon rotation of said valve body to deform said valve body and become disengaged from a respective said slot to allow removal of said valve body from said sleeve upon longitudinal movement of said valve body relative to said sleeve.

7. (Once Amended) The closure of claim 13, wherein said cap member further includes a central post extending axially along of said sleeve, and wherein said valve body includes a central cavity and a closed outer end having an aperture therein, said valve body being mountable for longitudinal movement along said post, said post being engaged within said aperture when said valve body is in said

closed position and disengaged with said aperture when said valve body is in said open position.

~~33. The fluid container of claim 1, wherein said valve body is constructed from elastic material to permit selective deformation and removal thereof from said outlet passageway.~~